

## **Senator Jeff Sessions Opening Statement**

### **“State and Local Authority to Enforce Immigration Law: Evaluating a Unified Approach for Stopping Terrorists.”**

#### **Introduction**

I would like to thank Chairman Chambliss for having this hearing today, we both desire to form a unified approach to stopping terrorism and such an approach requires improving our system of immigration enforcement.

The narrow topic of today’s hearing is one I care very deeply about – the ability of state and local law enforcement to voluntarily aid the federal government in the enforcement of immigration law. The Homeland Security Enhancement Act (S. 1906), which I introduced this Congress with Senator Miller, and which has been cosponsored by Senators Craig and Inhofe, will clarify the authority of state and local police to act voluntarily, will ensure that state and local police have access to immigration related information through the NCIC, and will increase federal detention and removal resources.

Let me be clear, neither this hearing nor S. 1906 is about the commandeering of state and local police forces or about forcing them to dedicate resources toward immigration law enforcement when they do not want to – both are simply about the *authority* of state and local police to voluntarily participate in immigration law enforcement if they so choose.

I am also proud that the State of Alabama and its Department of Public Safety have led the way in state immigration enforcement by being the 2<sup>nd</sup> state in the nation to sign a Memorandum of Understanding with DHS under Section 287(g) of the INA. This MOU provided for the training of Alabama state troopers and has led to the apprehension of 84 illegal aliens since October 2003. While I deeply value the Alabama MOU and think every state should have a similar MOU with DHS, I do not believe an MOU is necessary before state and local officers can voluntarily help DHS in the enforcement of our nation’s immigration laws.

#### **Enforcement Must Come Before Comprehensive Reform**

Unified immigration enforcement must be proven *before* we can enact comprehensive reform to our immigration system such as a guest worker program. I am convinced that our ability to successfully enforce our immigration laws in the interior as well as at the border is a test of whether we will be a nation governed by laws.

#### **Rule of Law and Current Numbers**

America’s strength is based on its commitment to the rule of law and a facade of immigration enforcement is both dangerous and irresponsible.

Lack of immigration enforcement in our country’s interior has resulted in 8-10 million illegal aliens living in the

U.S., making it easy for criminal aliens to disappear inside our borders.

Of the 8-10 million, the Department of Homeland Security has estimated that 450,000 are “alien absconders” (people that have been issued final deportation), 86,000 are criminal illegal aliens (people convicted of crimes committed in the U.S. that should have resulted in deportation), and 3,000 are from countries designated by the State Department as a “state sponsor of terrorism.”

So why can't we just find and deport the absconders, criminal aliens and terrorist threats? The answer is simple -- leaving the job of interior immigration enforcement solely to the mere 2,000 federal interior agents inside the borders guarantees failure. The number of illegal aliens outweighs them by 5,000 to 1. It is obvious that state and local police, a force 650,000 strong sworn to uphold the law, should be allowed to help enforce immigration law.

### **What America Thinks**

We know that Americans strongly value our heritage as a nation of immigrants and openly welcome legal immigrants and new citizens with character, ability, decency and a strong work ethic. However, it is also clear Americans do not feel the same way about illegal immigration as they do about legal immigration.

A RoperASW poll published in March of last year titled “Americans Talk About Illegal Immigration” found that 88% of Americans agree, and 68% “strongly” agree, that Congress should require state and local government agencies to notify the INS (now ICE) and their local law enforcement when a person is here illegally or has presented fraudulent documentation. Additionally, 85% of Americans agree, and 62% “strongly” agree that Congress should pass a law requiring state and local governments and law enforcement agencies to apprehend and turn over to the INS (now ICE) illegal immigrants with whom they come in contact. These numbers were collected on requiring state and local action, it is very likely that a poll on permitting volunteer state and local action would yield even stronger support.

### **Current Problems Facing Voluntary Enforcement**

#### **Problem #1: Confusion Over Authority to Act:**

It is clear that the first problem preventing state and local police from enforcing immigration law is confusion over their authority. A few years ago police all over Alabama started telling me the same story –

“we have given up calling the INS – they tell us that unless we have 15 or more illegal aliens in custody, they will not come pick them up.”

To make things worse, Alabama police were told that they could not detain the aliens until the INS could send someone, they had to just let them go!

I believe that telling Alabama police that they had to let them go was wrong. The legal authority of state and local

officers to voluntarily act on violations of immigration law is clear. Only two circuits, the Tenth and the Ninth, have expressly ruled on state and local law enforcement authority to make an arrest on an immigration law violation, and both confirm that authority. As the Tenth Circuit has further described in 1999, there is a “preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws,” *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999)(emphasis added).

The only confusion that exists can be traced to dicta of a 1983 Ninth Circuit case (*Gonzalez v. City of Peoria*, 722 F.2d 468) which addressed whether the authority to investigate and make an arrest changes if the immigration violation is a civil instead of a criminal one. No Tenth Circuit holdings has drawn any distinction between criminal violations of the INA and the civil violations that render an alien deportable.

This confusion was somewhat fostered by the erroneous 1996 Department of Justice Office of Legal Counsel (OLC) of opinion titled “Assistance by State and Local Police in Apprehending Illegal Aliens.” However, the relevant section of the opinion, which relied on the Ninth Circuit and drew a distinction between state and local authority over criminal and civil violations of immigration law, has since been withdrawn by OLC. While the confusion seems minor, the threat of lawsuits over misused authority has paralyzed state and local police who want to participate in immigration law enforcement.

### **Problem #2: Resources Needed for Detention and Removal**

The federal agency responsible for immigration enforcement told police chiefs in Alabama to “just let them go” mainly because they did not have the manpower to pick them up or the detention space to detain all apprehended illegal aliens. With a mere 2,000 interior officers and less than 2,000 appropriated detention beds, ICE must give first priority to detaining mandatory and criminal aliens.

In February of 2003, a DOJ Inspector General report titled “The Immigration and Naturalization Service’s Removal of Aliens Issued Final Orders found that 87% of those not detained before removal never get deported.”<sup>1</sup> Dedicating the federal resources needed to effectively pick up and detain illegal aliens apprehended and arrested by state and local officers is a necessity of effective immigration law enforcement.

### **Problem #3: No Real Connection to Immigration Information**

The first recommendation of the The Hart Rudman Report, “America Still Unprepared – America Still In Danger,”

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<sup>1</sup>U.S. Department of Justice (DOJ), Office of the Inspector General, *The Immigration and Naturalization Service’s Removal of Aliens Issued Final Orders* (Report Number I-2003-004), February 2003.

was to “tap the eyes and ears of local and state law enforcement officers in preventing attacks.”

On page 19, the report specifically cited the burden of finding hundreds of thousands of fugitive aliens living among more than 8.5 million illegal aliens living in the U.S. and suggested that the burden could and should be shared with 650,000 local, county, and state law enforcement officers if they could be brought out of the information void.

State and local police are accustomed to checking for criminal information in the (National Crime Information Center (NCIC) database, which is maintained by the FBI, from the roadside when they pull over a car or stop a suspect. Separately, ICE operates the Law Enforcement Support Center (LESC), which makes immigration information available to state and local police, but requires a second additional check after the NCIC check. This is a second check that most state and local police don’t know about or don’t have the time to perform. Immigration information should be part of the NCIC.

As part of its Alien Absconder Initiative, ICE is already in the process of entering information on the estimated 450,000 alien absconders into NCIC. As of October 31, only 15,200 alien absconders had been entered into NCIC, a number I found unacceptable and shocking. By this February, ICE had increased the number of alien absconders in the NCIC from 15,200 to a mere 25,041 – a number that is still unacceptable and shocking.

If “ICE is committed to using NCIC to its maximum effectiveness as a tool for sharing immigration-related information” as was stated in their letter to me on Feb. 12 of this year, entry of alien absconders must be rapidly increased and additional immigration related information must be entered into the NCIC.

### **Who Will State and Local Police Tell Us About?**

The value of state and local police is highlighted by remembering the following:

- Three of the 9/11 hijackers were stopped by state and local police in the weeks proceeding 9/11
- The D.C. Snipers were caught because of the fingerprint collected by local police in Alabama that matched with the one taken by the INS in Washington State.
- ICE never knew about the five deportable illegal aliens who gang raped a 42 year old woman sitting on a park bench in New York last year even though state and local police had arrested each of them before.
- The 56 illegal aliens ICE’s “Operation Predator” found living in New York and Northern New Jersey had already been caught by state and local police convicted of molestation and child abuse.<sup>2</sup>

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<sup>2</sup>New York Daily News - <http://www.nydailynews.com>. *Sex Cons Snarede*, by Bob Port, Leslie Casimir, and Greg B. Smith, Thursday, October 30, 2003.

### **Opposition**

As we discuss these issues, the opposition will say that state and local police can not adequately respect the civil rights of illegal aliens and that enforcement will be too costly. To me, it is curious logic to say that we are willing to pay for and trust our police to enforce laws against citizens but not against non-citizens here illegally. There has been and there will always training to prevent and consequences for failing to protect civil rights. We know it is always costly to enforce the law, but the cost of not enforcing the law is greater. We must take responsibility for providing the resources needed to do the job.

### **Conclusion**

If state and local police are confused about their authority to enforce immigration laws, that authority needs to be clarified. If state and local police can not access immigration background information on individuals quickly enough we need to fix that. If we don't have enough people to enforce the law, we need more people. If we don't have enough detention space to hold people that break the law, then we need more detention space.

It is time that we take up the issue of state and local authority to enforce immigration law and time that Congress give the federal agencies the resources needed to enforce our law. It is time to pass S. 1906, the Homeland Security Enhancement Act.